

MINUTES OF THE BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

Hilton San Francisco, Financial District
750 Kearny Street, Second Floor, Samsome Room
San Francisco, CA 94108

Thursday, April 18, 2013
Beginning at 10:00 a.m.

Board Members Present: Paul Wilburn, President; Erik Zinn, Vice President; Kathy Jones Irish; Carl Josephson; Mike Modugno; Ray Satorre; Jerry Silva; Robert Stockton; and Patrick Tami

Board Members Absent: Philip Quartararo; Hong Beom Rhee; and Michael Trujillo

Board Staff Present: Ric Moore (Executive Officer); Nancy Eissler (Enforcement Manager); Celina Calderone (Board Liaison); Jeff Alameida (Budget Analyst); Ray Mathe (Staff Land Surveyor); Brooke Phayer (Outreach Coordinator); Linda Brown (Certification Manager) and Gary Duke (Legal Counsel).

I. Roll Call to Establish a Quorum – The meeting was called to order by President Wilburn at 10:21 a.m. Roll Call was taken, and a quorum established.

II. Public Comment

Adam White introduced himself as the newest member of the Civil TAC.

V. Executive Officer's Report

A. Discussion of Legislation

AB 186 – This bill would authorize a board within DCA to issue a provisional license for 18 months to an applicant who meets certain requirements.

MOTION: Mr. Stockton and Mr. Josephson moved to oppose unless amended.

VOTE: 8-0, Motion Carried

AB 1057 – This bill would require each Board within DCA to inquire on every application for licensure if the applicant is serving in, or has previously served in, the military – commencing January 1, 2015.

MOTION: Mr. Josephson and Ms. Jones Irish moved to maintain a watch position.

VOTE: 8-0, Motion Carried

10:27 a.m. - Mr. Silva joined the meeting.

AB 1063 – Mr. Alameida reported that this bill would prohibit the use of certain titles using the words engineer or surveyor unless the person is appropriately licensed. Additionally it would authorize a licensed surveyor to include additional information, as specified, with a record of survey. It would require any monument set by a land surveyor or civil engineer to be marked as specified and to be marked with the name of the agency and the political subdivision it serves, if set by a public agency.

Ms. Eissler indicated that from an enforcement perspective, it should be mandatory that additional information be included if used in the survey and that an appropriate place to place it is in the existing Business and Professions Code 8764 which specifies what needs to be included with the record of survey. She also wants to make clear that the purpose of this additional information is to help others in reviewing it later to understand the Record of Survey. This additional information is informational and it is not something that would be verified by the county surveyor for technical accuracy. Language was developed to seek Board approval to submit it to the author and the sponsor with the position that the Board is opposed to the bill unless it is amended. Language would then be provided for consideration.

Mr. DeWitt representing ACEC presented a memo in reference to comments made regarding AB 1063.

Mr. DeWitt continued discussing monuments set by a public agency. ACEC believes it is an issue of fairness by requiring set tags to include a license number. Not having a license number on a tag that is set provides no assurance that the person is appropriately licensed by the Board.

Craig Copelan indicated that PEGC will likely oppose this portion.

Mr. Moore discussed 8772 in detail and pointed out that all publicly-employed licensed land surveyors or civil engineers authorized to practice land surveying would also have to have their numbers on the tags. He further stated that the Board does not have a problem with the language as it is already permissive for any licensee of a state agency to indicate their number on the tag. He added that from staff's point of view, the licensee that is in responsible charge is already responsible for these actions. There have been concerns expressed to staff that it is

difficult to trace which licensee was responsible for which survey at a public agency. One of the recommendations while working with ACEC and Assembly Member Eggman is the possibility of extending the authority of the Organization Record by having public agencies provide them with the licensee in charge. This may assist in identifying who is in responsible charge.

MOTION: Mr. Tami and Mr. Stockton moved to oppose unless amended with staff's recommended language.

VOTE: 9-0, Motion Carried

SB 152 – This Bill would require Geologists and Geophysicists to use a written contract when contracting to provide geological or geophysical services, as specified. It will provide for consistent operations among engineers, land surveyors, geologists and geophysicists. This bill also repeals temporary authorizations for engineers, geologists and geophysicists. This is a Board sponsored bill.

SB 207 – This bill will eliminate the requirement that the Board for Professional Engineers, Land Surveyors, and Geologists disclose its licensee's address of record. This is a Board Sponsored Bill.

MOTION: Ms. Jones Irish and Mr. Modugno moved to request that this bill be made a two year bill.

VOTE: 9-0, Motion Carried

SB 679 – This bill would increase the reporting provision to require that a licensee report to the Board in writing, as specified, if the amount or value of a civil settlement is greater than \$50,000 and would reduce the reportable amount to \$25,000 in cases in which there was a civil judgment or arbitration award.

MOTION: Mr. Josephson and Mr. Modugno moved to recommend a watch position.

VOTE: 9-0, Motion Carried

SB 822 – This bill is one of the Committee's omnibus bills. Among other things it creates a "retired registration" for geologists and geophysicists.

MOTION: Mr. Zinn and Ms. Jones Irish moved to support.

VOTE: 9-0, Motion Carried

B. Strategic Plan Update

Mr. Alameida reported that benchmarks assessing each task categorized by each objective were included in the update. In lieu of percentages, checkmarks were placed in one of three categories: completed, in progress, or remaining. Mr. Moore explained that many tasks were not conducive to measurement using percentages and hopes that this method is clearer. Mr. Satorre would like to see percentages and to quantify the objectives. Ms. Eissler explained that there are tasks that are not quantifiable and provided an example of the ongoing task of posting disciplinary decisions on the website. There was discussion as to possibly adding another category for ongoing maintenance. President Wilburn would like to stay away from percentages. Mr. Modugno indicated that some tasks may not have measurable outcomes and prefers this method of recording. Mr. Zinn added that it is possible for individual Board members to flag objectives and request specifics. Mr. Stockton suggested a projected completion date column. Mr. Satorre questioned what staff was doing once tasks were completed. Mr. Alameida explained that the document is a living document that represents completed tasks and new assignments. Tasks are presented by the Board for the staff to work on in terms of legislation, enforcement, registration, etc. Mr. Silva explained the Executive Officer's role is to direct staff with day-to-day operations; the Executive Officer has the role of monitoring the activities to ensure tasks are completed and addressed and then articulated back to the members of the Board; the Board developed high level policies and guidelines that the Executive Officer carries out. President Wilburn indicated that if anyone has any specific concerns, they should bring it up to Board staff, but as far as percentages go, he does not feel that it is productive. Mr. Moore noted that when staff has a task, they refer to the Strategic Plan as the Board's voice and guidance on how to proceed. Mr. Satorre voiced the importance of percentages to him. He would like to see an organization/function chart. President Wilburn stated that it is the responsibility of the Executive Officer to ensure that tasks are completed by staff, and the Board's role is to provide direction, not to manage how they are processed. Mr. Zinn noted that if there is a question, the Board member is welcome to ask, but the one Board member does not dictate the entire Board's wants or needs; if a Board member thinks there is insufficient data and they want more included in the next agenda, they can request to have more information provided through the formal motion process. Ms. Jones Irish suggested for discussion in the next agenda the publishing of disciplinary actions on website; specifically, how long after the decision is issued to the time it is posted on the website.

11:55 a.m. - Mr. Silva left the meeting.

C. Personnel

Mr. Moore indicated that Mr. Alameida attended several hearings of Assembly and Senate Committees for the Geologist Registrar position BCP. It was approved in both committees and has moved on to be in next fiscal year's budget. The Board would like to have a geologist on staff before the end of the 2013 calendar year.

D. Administrative Task Force

Mr. Moore indicated that an Administrative Task Force meeting is scheduled for May 8, 2013, regarding the audit of the enforcement process. The Enforcement staff has gathered information for the committee to assist in an evaluation. Staff has reviewed completed cases and captured dates during investigations. They are categorizing them to have information available for the committee. The goal is to have the committee review the information to determine what is reasonable and have recommended goals. Some research has revealed trends that they would like to present to the Board. Procedures need to be established to efficiently track these goals and time frames both internally and with outside parties. In addition, the need to refine the processes, procedures, and criteria when selecting Expert Consultants need to be determined. Internally, there are staff licensees, and we need to better define their role and how to utilize them in investigations versus outside experts. Furthermore, enforcement staff is working full time investigating cases but there are other duties in their daily workload that contribute to their work. This needs to be considered on how they are impacted on their ability to meet these goals.

As for applications, there was an early meeting with expert consultants' to help gather information on methods of application review. In doing this, it appears as though there are going to be recommendations working with the committee to possibly make proposals to the Board.

The Board Operating Procedures and the TAC Operating Procedures will be reviewed as well by the committee. Mr. Zinn inquired if Board members could attend a committee meeting. Mr. Moore indicated that some Board members may be included; however, no more than two can attend at any given time. Members can submit e-mails for discussion to Mr. Moore. Mr. Duke reminded everyone that comments should be funneled through the executive officer.

1:30 p.m. - Mr. Silva returned to the meeting

VI. Enforcement

A. Enforcement Statistical Reports

Ms. Eissler provided statistics recorded at each Board meeting and how it is progressing throughout the fiscal year. She provided a chart that reflected the different types of formal disciplinary actions and indicated that the majority of the disciplinary actions were stipulated settlements.

Ms. Eissler advised that the average amount of time from when a complaint is received to the time it is opened is about 14 days. More information will become available through the Administrative Work Group.

Ms. Eissler added that the backlog of cases awaiting issuance of a citation and awaiting referral to the Office of the Attorney General for either a citation appeal hearing or formal disciplinary action has been eliminated and cases are now being transmitted on a flow basis.

VII. Exams/Licensing

A. Examination Update

Mr. Mathe reported that because they are in the middle of the testing cycle, they do not have statistics. According to his and staff's experience, this is the quietest exam cycle. The no-show rate has gone down considerably and candidate complaints are almost non-existent.

VIII. Approval of Delinquent Reinstatements

MOTION: Mr. Silva and Mr. Tami moved to approve.

VOTE: 9-0, Motion Carried

IX. Consideration of Rulemaking Proposals

A. Adoption of Proposed Amendments to Title 16, California Code of Regulations Sections 411, 412, 3008, and 3009 (Seal, Signature, and Address Change); and 442 and 3035 (Examination Subversion)

MOTION: Mr. Tami and Mr. Satorre moved to adopt Seal, Signature, and Address Change proposals.

VOTE: 9-0, Motion Carried

MOTION: Mr. Zinn and Mr. Tami moved to adopt Examination Subversion proposals.

VOTE: 9-0, Motion Carried

MOTION: Mr. Stockton and Mr. Satorre moved to delegate to Executive Officer to finalize the two rulemaking proposals for submittal to DCA and the Office of Administrative Law.

VOTE: 9-0, Motion Carried

X. Administration

A. FY 2012/13 Budget Overview

Mr. Alameida reported that expenditures from the PELS Fund have been reduced by \$4.0 million versus last fiscal year as a result of no longer contracting for and administering national exams. Applications have decreased as a result of no longer requiring EIT and LSIT applications prior to sitting for exams. The Board projects a reduction of 50% in EIT and LSIT applications versus last fiscal year.

Mr. Moore added that staff is noticing a greater number of delinquent renewals. Mr. Alameida speculated that it may be a result of an aging population or individuals going into other occupations, and Mr. Moore attributed it to the economy or those licensees out of the workforce.

As for the Geologist and Geophysicists Fund, as of February 28, 2013, expenditures have increased as a result of multiple exam development and occupational analysis contracts with OPES (Office of Professional Exam Services). Overall, expenditures and revenue at year-end should remain consistent with historical averages.

Mr. Alameida reported that there will be an increase in the PELS Fund balance as a result of the repayment of the \$2.5 million general fund loan. He is also open to suggestions on how to present the budget reporting.

MOTION: Mr. Silva and Mr. Satorre moved to direct staff to prepare recommendations for budget reporting.

VOTE: 9-0, Motion Carried

XII. Liaison Reports

C. NCEES

1. Mr. Jerry Carter, Executive Director – Update on NCEES Activities
Mr. Moore introduced Mr. Jerry Carter, Executive Director for NCEES. Mr. Carter discussed CBT and application processes that will be beneficial to the candidates and state boards by possibly reducing board's efforts in processing applications. He reported that over the weekend, the national examination had approximately 53,000 candidates, across 300 locations, and seven international locations. He reported some incidences. Financially, they have been doing well, and he appreciates the California Board's involvement.

During the Annual Meeting that will be held in August, there will be a motion that the Ohio Board will introduce. Currently the NCEES bylaw indicates one vote per board. Under the proposal, if a board regulates two professions, you would get two votes. Recommendation to change the bylaw requirements as it is a matter of fairness.

The ACCA committee is proposing that the model law be amended to disassociate the connection between the exams and experience.

Mr. Modugno thanked Mr. Carter for assisting with resolving the exam issue that took place several years ago.

Mr. Moore noted that Mr. Donelson and Mr. Phayer have been working on a series of webinars to assist in the Board's outreach efforts utilizing information provided by NCEES to ensure consistency in the dissemination of information in reference to CBT and the fundamentals exams in addition to promoting certification.

Mr. Moore also proposed to recommend that NCEES fund more delegates based on the number of licensees regulated by each board. This would allow California to have another funded position. Mr. Carter indicated that it is already being considered. Mr. Tami recommended that staff contact other states to see how they would view such a proposal and then bring the matter back to the Board at the next meeting.

2. Appointment of Associate Member

Mr. Moore noted that Ms. Eissler has expressed interest in working with NCEES law enforcement committee as an Associate Member of the Board. It would allow Ms. Eissler to attend various meetings sponsored by NCEES.

MOTION: Mr. Tami and Mr. Satorre moved to nominate Nancy Eissler as Associate Member to NCEES

VOTE: 9-0, Motion Carried

A. ASBOG

Mr. Zinn reported that he attended the Subject Matter Expert Council of Examiners in Virginia as a licensed subject matter expert. ASBOG was pleased to have a representative licensed and actively practicing in California attend. The fundamentals and practices exams appeared to be congruent with the board's mission.

B. ABET

No report given.

D. Technical and Professional Societies

No report given.

XI. Technical Advisory Committees (TACs)

A. Board Assignments to TACs

No report given.

B. Appointment of TAC Members

MOTION: Mr. Stockton and Mr. Tami moved to appoint Adam White and Neal Colwell to the Civil TAC.

VOTE: 9-0, Motion Carried

MOTION: Mr. Tami and Mr. Zinn moved to re-appoint Paul Enneking to Land Surveyor TAC.

VOTE: 9-0, Motion Carried

C. Reports from the TACs

Mr. Mathe reported on the LS TAC meeting that took place April 12, 2013.

XIII. President's Report/Board Member Activities

President Wilburn acknowledged Board staff for assisting in assembling the NCEES Western Zone meeting in coordination with the Board meeting. In addition, he thanked Board members for attending the meeting and working together in a professional manner.

XIV. Other Items Not Requiring Board Action

No report given.

XV. Approval of Consent Items

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board

member wishes to discuss will be removed from the consent items and considered separately.)

A. Approval of the Minutes of the March 7, 2013 Board Meeting

MOTION: Mr. Tami and Mr. Zinn moved to approve Board meeting minutes

VOTE: 7-0-2, Motion Carried, Kathy Jones Irish and Robert Stockton abstained.

III. Closed Session – Personnel Matters, Examination Procedures and Results, Administrative Adjudication, and Pending Litigation (As Needed) [Pursuant to Government Code sections 11126(a) and (b), 11126(c)(1), 11126(c)(3), 11126(e)(1), and 11126(e)(2)(B)(i)]

IV. Open Session to Announce the Results of Closed Session
Ms. Eissler reported that the Board discussed the three law suits as noticed and took action on two stipulations, a default decision, and a proposed decision. In addition, Mr. Duke reported that an evaluation was conducted of the Board's Executive Officer.

XVI. Adjourn

Meeting adjourned at 6:05 p.m.

PUBLIC PRESENT

Jerry Carter, NCEES

Craig Copelan, PECG

Adam White

Erin Grisby, CPIL/USD

Jim Foley